

1 you, that is, Press Exhibit No. 18, page 3, does that
2 contain any indication that your construction plans, that
3 is, to complete the construction by December 1992, were
4 contingent in any way on the grant of either the sixth
5 extension application or the assignment application filed in
6 November of 1991?

7 A Mr. Cole, again, I think it's clearly implicit.
8 You know, how can anybody build without a valid construction
9 permit is beyond me. I certainly would not do it.

10 Q May I understand that answer to be that there is
11 no indication --

12 MS. POLIVY: Your Honor, I am going to object.
13 This is clearly an application to permit an action. That's
14 what it was. It is an application for the assignment of a
15 construction permit. And it says it is proposing
16 reorganization. Obviously, no Commission permittee can
17 reorganize without the Commission's approval.

18 Consequently, it's not simply implicit, although
19 it's on its face required.

20 JUDGE CHACHKIN: The objection is overruled. You
21 can answer the question.

22 THE WITNESS: The question, Mr. Cole?

23 BY MR. COLE:

24 Q My question was whether your response a moment
25 ago, your last response to my last question to you, can

1 properly be understood to be a concession that there is on
2 reference in Exhibit 1, paragraph 1 --

3 MS. POLIVY: I object to the form of the question.
4 "is it a concession."

5 MR. COLE: Your Honor --

6 MS. POLIVY: That's an improper question, Your
7 Honor.

8 MR. COLE: -- I asked a question. He could have
9 answered yes or no, not a speech.

10 JUDGE CHACHKIN: Look, go ahead with your
11 question.

12 MR. COLE: Thank you.

13 JUDGE CHACHKIN: If there is an objection, it's
14 overruled.

15 It only calls for a yes or no answer, Mr. Witness.

16 THE WITNESS: The question, sir?

17 BY MR. COLE:

18 Q The question is -- I will rephrase the question to
19 make it easier at this point.

20 Isn't it true that this paragraph and, in fact,
21 all of Exhibit 1, but I will restrict my question right now
22 to this paragraph, does not contain any indication that
23 Rainbow's construction plans and its statement that it will
24 commence operation by December of 1992 were in any way
25 contingent on the grant of either the sixth extension

1 application or it's short form application filed in November
2 of 1991?

3 A Again, I -- the answer is that it's implicit in
4 the paragraph, sir.

5 JUDGE CHACHKIN: The answer is either yes or no.
6 Does it contain a reference or doesn't it?

7 THE WITNESS: I believe it does, sir.

8 BY MR. COLE:

9 Q Could you point me to that language?

10 A Well, there is a proposed reorganization that
11 needs to have approval.

12 Q That's it?

13 A That's the answer, sir.

14 Q How did that language reflect a contingency
15 concerning Rainbow's construction plans?

16 MS. POLIVY: I object to the form of the question.
17 I can't even understand it.

18 JUDGE CHACHKIN: The question is whether the
19 witness understand it.

20 THE WITNESS: I don't understand it, Your Honor.

21 JUDGE CHACHKIN: You don't understand the
22 question.

23 BY MR. COLE:

24 Q Mr. Rey, as I understand your testimony in
25 response to my last question where I asked you where in that

1 paragraph there is any indication concerning contingencies
2 relating to Rainbow's construction plans, you pointed to the
3 language proposing a reorganization; isn't that correct?

4 MS. POLIVY: Your Honor, that wasn't what Mr. Cole
5 asked.

6 JUDGE CHACKIN: Ms. Polivy, that is the pending
7 question. In the future if you have any objection, just
8 state objection.

9 MS. POLIVY: Yes, Your Honor.

10 JUDGE CHACKIN: Do not make any statements
11 concerning whether you understand it or not. That is not a
12 proper objection.

13 MS. POLIVY: Your Honor, I object to the form of
14 the question. I assume --

15 JUDGE CHACKIN: You want to object to the form of
16 the question?

17 MS. POLIVY: Yes, I do.

18 JUDGE CHACKIN: State your objection to the form
19 of the question. But don't state you don't understand it.

20 MS. POLIVY: My objection to the form of the
21 question is --

22 JUDGE CHACKIN: That is not proper. Don't state
23 that in the future.

24 Go ahead, Mr. Cole. What is your pending
25 question?

1 MR. COLE: Your Honor, I'll rephrase it again just
2 again to try to streamline this.

3
4 BY MR. COLE:

5 Q Mr. Rey, I asked you whether there is anything in
6 this first paragraph in Exhibit 1 to the application which
7 appears at Press Exhibit No. 18, which reflects in any way
8 the contingency affecting Rainbow's stated commitment to
9 commence operation of its station by December 1992.

10 As I understand your testimony --

11 A Maybe this will help you, Mr. Cole.

12 Q Let me finish framing my question, please.

13 As I understand your testimony, you said that
14 there was language in this paragraph reflecting such a
15 contingency. I asked you to point that language out, and
16 you said "proposing a reorganization." And I asked you how
17 the language "proposing a reorganization" in your review
18 reflects a contingency concerning Rainbow's construction
19 plans and its intention to have the station on the air by
20 December 1992.

21 A Maybe I can answer you this way, Mr. Cole.

22 As I sit here today, I believe that no one can
23 build and sign on a station without having a valid
24 construction permit. With a construction permit expired in
25 July of 1991, and here we are, and let's say hypothetically

1 in February of 1992, it is my understanding that I could go
2 to jail if I sign an unauthorized -- if I turn on and emit
3 radiation on a frequency that is licensed by the FCC, and I
4 am not authorized.

5 If I am mistaken on that, then I guess I have a
6 big misunderstanding of what a construction permit is. But
7 as I sit here I believe that unless I have an authorization
8 to transmit on Channel 65 that is valid, I cannot turn on
9 that station. That is my understanding of the law.

10 So if I am proposing to reorganize for the sake of
11 equity financing, if I am informing the Commission of a
12 \$60,000 risk that I took in building a transmitter building,
13 if I am telling the Commission that I am interviewing and
14 accepting bids in looking at equipment and advancing
15 programming, I didn't tell that I was buying it because I
16 couldn't have bought it. I am telling the Commission what I
17 am doing, how I am moving forward.

18 But what good is it to build it if I can't turn it
19 out?

20 THE WITNESS: And, Your Honor, tell me, can I
21 build a station and turn it on with having authorization?
22 Isn't it illegal?

23 I mean, as I sit here that's my understanding. So
24 to propose to me that build the station, you know, without a
25 valid construction permit, I find it silly, as I said

1 before, the prospect of it. I don't think anybody in their
2 right minds would do it. But if somebody can tell me that I
3 am wrong, that I can build it and turn it on without having
4 a construction permit, you know, then I totally
5 misunderstood. But I don't think you can.

6 JUDGE CHACHKIN: We will take a 10-minute recess.

7 MR. COLE: Thank you, Your Honor.

8 (Whereupon, a recess was taken.)

9 JUDGE CHACHKIN: Back on the record.

10 Mr. Cole.

11 MR. COLE: Thank you, Your Honor. I have only two
12 or three more questions.

13 BY MR. COLE:

14 Q Mr. Rey, is it a correct statement that you have
15 testified today that Rainbow was eager to build a station in
16 November 1990, but was prevented from doing so by the tower
17 litigation?

18 A By November of 1990, Mr. Cole, I think the lawsuit
19 was already filed. Our focal point is on that litigation.
20 Later on that month I still contend and with Judge Marcus's
21 order of status quo even to the Defendants, that Rainbow
22 cannot go ahead and construct because Rainbow is not
23 entitled by the lease to go in there and construct on its
24 own.

25 Rainbow, since June of 1990, was very eager to

1 start construction. There was a reconsideration filed. So
2 Rainbow did a lot of preconstruction planning, and was very
3 eager for that decision, that reconsideration, that we felt
4 it was somewhat academic to pass nevertheless to start
5 construction.

6 So at all times Rainbow has been very eager to
7 construct, Mr. Cole.

8 Q Is it true that if Rainbow had dismissed its
9 lawsuit against Guy Gannett you could have proceeded with
10 construction?

11 A Yes, that's true, and it could have been worthless
12 CP, and I would have chosen maybe to give it back to the FCC
13 or something like that at that time. In November or
14 December of 1990, that's what I believed.

15 MR. COLE: i have no further questions.

16 JUDGE CHACHKIN: Mr. Silberman.

17 MR. SILBERMAN: Your Honor, thank you.

18 Good afternoon, Mr. Mr. Rey. David Silberman from
19 the Separate Trial Staff.

20 MR. COLE: Your Honor, I reminded by Ms. Farhat
21 that I still have some exhibits still outstanding. Can I --

22 JUDGE CHACHKIN: Let's do that.

23 MR. COLE: I apologize.

24 MR. SILBERMAN: I am still David Silberman but you
25 will have to wait.

1 THE WITNESS: Good afternoon, Mr. Silberman.

2 MR. COLE: I have according to my notes Press
3 Broadcasting 13, which is the 34-page Press petition for
4 reconsideration, and I would move for the admission of that
5 into evidence.

6 MS. POLIVY: Your Honor, what is the relevance of
7 Exhibit 13?

8 The allegations made by Press are not -- have no
9 status in this proceeding, and frankly have no relevance to
10 the issues.

11 JUDGE CHACHKIN: Mr. Cole?

12 MR. COLE: Your Honor, the first part of the
13 formal record which led up to this case is a document which
14 was served on Rainbow, and put Rainbow on notice of at least
15 allegations by Press that Rainbow had not satisfied the
16 standards imposed by the Commission for an extension of a
17 construction permit.

18 In particular, that Rainbow has not demonstrated
19 that certain things were beyond the control for
20 constructing, and I offer it for that purpose. But it is
21 also part of this record, the record at the Commission, but
22 it's useful in the record for that purpose.

23 MR. EISEN: Just because it's useful, Your Honor,
24 doesn't mean it should be in the record.

25 JUDGE CHACHKIN: Mr. Silberman, do you have any --

1 MR. SILBERMAN: Yes, there were a number of
2 questions, I believe, that were asked of the witness about
3 this, and I think it is part of the history of the case and
4 it should go in the record.

5 MS. POLIVY: Your Honor, the history of the case
6 is approximately a foot and a high. There are many, many
7 pleadings that are the history of the case. That does not
8 make them relevant.

9 Secondly, insofar as Mr. Cole is apparently trying
10 to offer this for the proof of the matters alleged in it, it
11 is improper evidence of any sort.

12 Thirdly, the notion that any applicant is required
13 to respond to each and every argument or allegation, no
14 matter how baseless and unsupported, and an objector being
15 formal or informal, is simply erroneous. This is an
16 absolutely incompetent and irrelevant piece of evidence.

17 MR. SILBERMAN: Your Honor, may I make one
18 additional point on this before you make a decision?

19 JUDGE CHACKIN: Yes.

20 MR. SILBERMAN: This petition for reconsideration
21 is also important on the ex parte issue in that the
22 Commission in its order of May of '94 concluded that this is
23 what made this a restricted proceeding, and also in the
24 Daniels letter, which is already in the record, it
25 references this petition for reconsideration.

1 I don't believe this is being offered for the
2 truth of the matters asserted. It's being offered for
3 credibility, impeachment and also notice to the witness of
4 issues that were being raised because it's pertinent insofar
5 as there were arguments made, or there is testimony by this
6 witness about the fact that he believed that he was
7 precluded from constructing the station by Judge Marcus's
8 order. And this is a --

9 JUDGE CHACHKIN: This is not his document.

10 MR. SILBERMAN: Excuse me, no. Sorry, wrong
11 document. Wrong document.

12 MS. POLIVY: And, Your Honor, we have stipulated
13 to the fact that these --

14 MR. SILBERMAN: I withdraw the last, I withdraw
15 the last. Yes, I withdraw the last comment. But to the
16 extent that it is relevant to the issues, it's relevant to
17 the ex parte issue and it's also relevant to the --

18 JUDGE CHACHKIN: Well, how is it relevant to the
19 ex parte issue?

20 MR. SILBERMAN: It's relevant to the extent, Your
21 Honor, that the Commission has made a determination that
22 this is the pleading that made the contacts, if there were
23 ex parte contracts, to be prohibited by the Commission's
24 rules, and it's also referenced in the Daniels letter, which
25 has already been offered and admitted into evidence.

1 MR. COLE: Also, Your Honor, during Ms. Polivy's
2 cross-examination yesterday I had occasion to ask that
3 resulted in a colloquy between Ms. Polivy and the attorney
4 whether or not the attachments were included. But I think
5 if nothing else, I believe notwithstanding cross-examination
6 of Ms. Polivy and Mr. Rey it will be a useful document to
7 have in the record.

8 I am not offering, contrary to what Ms. Polivy
9 suggested, for the truth of the matters asserted. But I am
10 also not suggesting nor have I ever suggested that Rainbow
11 is required to respond to every allegation presented to the
12 Commission of Rainbow. I am merely suggesting for
13 credibility that where allegations are presented and where
14 the applicant is given an opportunity to respond, and the
15 applicant apparently declines to respond in a way consistent
16 with the response that pops up from the witness stand six
17 years later that may affect that witness's credibility.

18 MR. EISEN: But that has nothing to do with the
19 relevance of this document.

20 JUDGE CHACHKIN: Well, the only thing I heard that
21 possibly could be relevant is the fact that it's referred to
22 in its connection with the ex parte issue. The rest of the
23 reasons given are not valid as far as I could see.

24 The question is whether we need this entire
25 document.

1 MS. POLIVY: Your Honor.

2 JUDGE CHACHKIN: Or just the mere fact of the
3 petition for reconsideration by itself.

4 MS. POLIVY: I believe that --

5 JUDGE CHACHKIN: Of course, not being received for
6 the truth.

7 MS. POLIVY: -- we have stipulated --

8 JUDGE CHACHKIN: Just the fact that such a
9 document was filed.

10 MS. POLIVY: May I suggest if you are going to
11 admit it for that reason then that what should be admitted
12 is the first five pages simply to show that the petition for
13 reconsideration and something entitled an informal objection
14 was filed, because that was -- otherwise, these things have
15 a way of creeping into the record, and we suddenly get
16 quotations.

17 MR. COLE: Your Honor, oddly, with Mr. Polivy on
18 the witness stand yesterday who had concerns that the
19 petition for reconsideration, the first five pages she is
20 subscribing now, was incomplete.

21 MS. POLIVY: Yes, because you asked me, Mr. Cole,
22 whether that was what I had received, and I told you that
23 was not what I received because it didn't have the informal
24 objection attached to it.

25 JUDGE CHACHKIN: All right, I am going to receive

1 it solely in connection with the ex parte issue, as a
2 document that was filed in connection with the ex parte
3 issue, but for no other purpose is it going to be used.
4 It's received for just that limited purpose.

5 MR. COLE: Thank you, Your Honor.

6 (The document referred to,
7 having been previously marked
8 for identification as Press
9 Exhibit No. 13, was received
10 in evidence.)

11 MR. COLE: Now, my recollection, Your Honor, is
12 that Press Exhibit 15 was withdrawn. Press Exhibit 16, I
13 believe, is in; is that correct? I have it in my notes as
14 received.

15 JUDGE CHACHKIN: Yes.

16 MR. COLE: And then we have Press Exhibit No. 17
17 which is the portion of, or the excerpt from the deposition
18 of Mr. Rey on December 18, 1990, about which he was cross-
19 examined. I would move for the admission of that Press
20 Exhibit No. 17.

21 JUDGE CHACHKIN: Any objection?

22 MS. POLIVY: Yes, Your Honor, I do object.

23 First of all, as I understand it, Mr. Cole was
24 interested in one question and answer which he read into the
25 record. This exhibit standing along to any stranger is

1 without any meaning whatsoever.

2 MR. EISEN: Further, I believe Mr. Rey testified
3 to excerpts in his deposition that preceded the pages.

4 JUDGE CHACHKIN: If you want to put in any
5 excerpts of deposition, you can. Insofar as this particular
6 document is concerned, I'm going to receive it.

7 MR. COLE: Thank you, Your Honor.

8 (The document referred to,
9 having been previously marked
10 for identification as Press
11 Exhibit No. 17, was received
12 in evidence.)

13 JUDGE CHACHKIN: If you feel there are relevant
14 portions elsewhere, you may introduce it.

15 Anything else?

16 MR. COLE: Yes, finally, we have Press Exhibit No.
17 18, which is the application of Rainbow Broadcasting Company
18 for consent and reassignment of construction permit.

19 As I indicated when I distributed this, my
20 examination consisted or concerned only the first paragraph
21 on page 3. Well, page 3 generally but focused primarily on
22 the first paragraph, and I only offer that as our exhibit.

23 MS. POLIVY: Your Honor, that's another instance
24 that it's been read in to the record. It's an exhibit of
25 some 43 pages.

1 JUDGE CHACHKIN: Well, he is only offering the
2 first three pages, I understand.

3 Is that correct?

4 MR. COLE: That's correct.

5 MS. POLIVY: Then can he physically re-identify it
6 and remove it? Otherwise it --

7 MR. COLE: I would be happy to withdraw it and
8 reform it just to consist of --

9 JUDGE CHACHKIN: That would be fine.

10 MS. POLIVY: Then I would withdraw my objection.

11 JUDGE CHACHKIN: All right. I will receive the
12 first three pages, which I understand the exhibit is going
13 to be reformed so it's just going to consist of the first
14 three pages.

15 MR. COLE: It will retain the No. 18.

16 JUDGE CHACHKIN: Yes.

17 (The document referred to,
18 having been previously marked
19 for identification as Press
20 Exhibit No. 18, was received
21 in evidence, but only the
22 first three pages of the
23 exhibit.)

24 MR. COLE: Finally, Your Honor, Rainbow Exhibit 8
25 was identified and received in the record for the limited

1 purpose of attachment A, which was the chronology of events,
2 I think, of the Rainbow construction permit.

3 MS. POLIVY: No, we didn't limit it.

4 MR. SILBERMAN: Yes, you did.

5 JUDGE CHACHKIN: What are we talking about now?

6 MR. COLE: Rainbow Exhibit 8.

7 JUDGE CHACHKIN: Rainbow Exhibit 8 was received,
8 yes.

9 MR. EISEN: No, the chronology was only one part
10 of that document.

11 MR. COLE: My understanding was that it was
12 received for the limited purpose of only appendix A.

13 MS. POLIVY: Your Honor, we didn't ask for a
14 limited purpose. It was received without -- well, my notes
15 say it was, and I would ask the reporter find it then.

16 Are you asking that it be received?

17 MR. COLE: I am asking that the first 12 pages, or
18 actually the first 13 pages be received just because those
19 were the area that were subject to cross-examination of Mr.
20 Rey.

21 MS. POLIVY: Your Honor, then I would ask that the
22 whole thing be received if it hasn't already.

23 JUDGE CHACHKIN: I think the document was received
24 not for the truth of the matters, but just for --

25 MS. POLIVY: Yes.

1 JUDGE CHACHKIN: I have it as received.

2 MS. POLIVY: Yes.

3 MR. EISEN: Yes.

4 JUDGE CHACHKIN: Just for that limited purpose.

5 It wasn't received for anything else, but the entire
6 document was received.

7 MS. POLIVY: No, the whole document was received.

8 MR. COLE: The whole document was received?

9 MR. SILBERMAN: Yes.

10 MR. COLE: Our notes indicate it was just appendix

11 A.

12 JUDGE CHACHKIN: I don't think there was any
13 objection to it.

14 MR. EISEN: There was none.

15 MR. COLE: No. And I think that takes care of my
16 exhibits, the outstanding exhibits. I appreciate your
17 indulgence, Your Honor.

18 JUDGE CHACHKIN: All right, Mr. Silberman.

19 MR. SILBERMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SILBERMAN:

22 Q Mr. Rey, I believe it was your testimony yesterday
23 or today that you were relying on Mr. Conant to lend Rainbow
24 \$4 million to construct the station and operate it for the
25 first three months; is that correct?

1 A Yes, sir.

2 Q Did there come a time when --

3 MS. POLIVY: I'm sorry.

4 JUDGE CHACHKIN: I thought it was for the first
5 year.

6 MR. SILBERMAN: The first year. I'm sorry. For
7 the first year.

8 BY MR. SILBERMAN:

9 Q Did there come a time when that commitment from
10 Mr. Conant no longer existed?

11 A No, that commitment was always there.

12 Q And eventually you constructed the station,
13 correct?

14 A Eventually we constructed the station, but we
15 didn't use Mr. Conant's money, but the commitment from Mr.
16 Conant was always there.

17 Q Did you have an understanding with Mr. Conant that
18 he would provide you with a bridge loan if you needed it to
19 construct the station and get it on the air?

20 MS. POLIVY: Object to the form of the question
21 unless you put it in some kind of time frame.

22 MR. SILBERMAN: Okay, I will ask the witness this.

23 BY MR. SILBERMAN:

24 Q Was there a time between 1985 and 1993, let's say
25 when you first entered into the understanding with Mr.

1 Conant some time in the mid eighties, till the end of 1993,
2 we will take that time frame, where you had an understanding
3 with Mr. Conant that he would provide you with a bridge
4 loan?

5 You understand what a bridge loan is?

6 A Um-hmm.

7 Q In order to provide you money to get the station
8 operational -- constructed and get it on the air?

9 A The bridge loan pertained, as I recall, to we were
10 seeking equity financing, and if we received FCC approval on
11 the transfer to Rainbow Broadcasting Limited, and there was
12 a need for a period of time to get that new partnership
13 ready and funding and all the paper work, et cetera, on it,
14 Howard was willing to give us a bridge loan.

15 Q And during that time frame?

16 A During the time frame --

17 Q Between say late 1984-85 --

18 A Yes.

19 Q -- when you first reached agreement until December
20 of 1993?

21 A The bridge loan, I think, was addressed in 1991,
22 if I am not mistaken, but the concept of the loan was that
23 he would lend up to \$4 million, get the station going, we
24 would repay his loan in its entirety after 90 days of
25 operation. He would not receive any cash flows as in the

1 five-year deal, if you will.

2 Q Excuse me. You have answered the question
3 partially.

4 The agreement for the bridge loan was in 1991, the
5 initial agreement that you had with him for the bridge loan;
6 is that correct?

7 A I believe so.

8 Q And when did that come to an end, if it did, as
9 far as your understanding?

10 A It didn't come to an end where we said one day,
11 okay, no more. We didn't need it. It didn't get used.

12 Q Was Mr. Conant the only person you spoke to to
13 borrow money for your station?

14 MS. POLIVY: I'm sorry. I would object to the
15 form of the question unless you put it in a time frame.

16 MR. SILBERMAN: Okay.

17 BY MR. SILBERMAN:

18 Q Again, going back between '85 and 19 -- let's take
19 1991, had you spoken to anyone else other than Mr. Conant to
20 borrow money to construct your station and operate it for a
21 year?

22 A Well, I relied on Howard Conant, and I had spoken
23 to, and I don't recall the dates, for equipment financiers,
24 because Howard had agreed to be junior to equipment lenders
25 or lease-back programs as many was doing the equipment. So

1 Howard was the only one that I was relying on in terms of
2 dollars to build an operate the station junior to equipment
3 lenders, and I had spoken to RCA back in the early eighties,
4 and there might have been others through that time. That
5 was specifically equipment lenders.

6 MR. SILBERMAN: Could counsel show or does the
7 witness have Exhibit No. 10 of Press Broadcasting Company?
8 And I am referring to page 9 of that exhibit, please.

9 MR. EISEN: Do you have a copy of that up there?

10 THE WITNESS: I don't know what that is.

11 MR. SILBERMAN: It's the testimony -- excerpts of
12 testimony of Joseph Rey in Rey v Gannett, January 11, 1991.

13 THE WITNESS: I believe I have it here.

14 MR. SILBERMAN: Okay.

15 BY MR. SILBERMAN:

16 Q Could you turn, please, to page 9 of the exhibit?
17 And I am referring you to lines 3 and 4.

18 A Yes, sir.

19 Q The question was asked of you, "Have you talked to
20 anyone else about loaning you money?"

21 Your testimony was, "As of late, he's the only
22 person I was talking to."

23 A Yes, sir.

24 Q And that was correct at the time you gave the
25 testimony in January of 1991?

1 A Yes, sir.

2 Q Between January of 1991 and say December of '93,
3 had you spoken to anyone else about loaning you money other
4 than equipment suppliers?

5 A Yes.

6 Between '91 and 93, yes.

7 Q Could you tell us who you spoke to?

8 A Well, we were talking to equity investors --
9 potential equity investors in Rainbow Broadcasting, Limited,
10 that --

11 Q I'm talking about -- excuse me.

12 Do you understand the difference between an
13 investor, a limited partner who invests money in an
14 enterprise, and a lender such as a bank or someone like Mr.
15 Conant who you relied on to lend you money?

16 I am distinguishing between someone who is going
17 to invest in an equity position and someone to lend you
18 money.

19 Do you understand the difference?

20 A Yes.

21 Q Okay, based on your understanding now is there any
22 other person other than equipment suppliers and Mr. Conant
23 who you were speaking to in the period 1991 to 1993 to loan
24 money to Rainbow Broadcasting Company?

25 A Yes.

1 Q There were others?

2 A There was one that comes to mind.

3 Q And could you say who that was, please?

4 A That was John Loftus. He was going to lend us
5 money that we were going to use for the equipment. He is
6 not an equipment supplier. He's an individual that we were
7 going to make a deal with for the equipment.

8 Q I want to refer the witness to Joint Exhibit No.
9 7, the letter from Margot Polivy to Clay Pendarvis, Joint
10 Hearing Exhibit No. 7. And page 2 of that exhibit is part
11 of the letter - first of all, are you familiar with this
12 letter, Mr. Rey?

13 A I am vaguely familiar.

14 Q I am referring to page 2, the second full
15 paragraph, the second sentence reads, "However, in order to
16 go forward under the limited partnership Rainbow required
17 Commission approval of the transfer and a valid construction
18 permit."

19 Referring to that, were you familiar with that
20 representation when it was made to the Commission in April
21 of '93?

22 A I would say so.

23 Q And the next sentence, "In the absence of
24 Commission action Rainbow cannot use the funds committed to
25 the partnership," correct?

1 A Correct.

2 Q And you are familiar with those representations
3 and in your mind at the time they were true and accurate?

4 A Yes.

5 Q Turning to page 5 of the exhibit, which is page 2
6 of the statement of yours.

7 A Yes.

8 Q There is one full paragraph in the center of the
9 page and I would like you to read that paragraph to
10 yourself, please, because I have a question about what you
11 say in there.

12 MS. POLIVY: Page 5?

13 MR. SILBERMAN: Page 5 of the exhibit. It's page
14 2 of his statement, and it begins, "Rainbow has collected
15 equipment."

16 (Witness reads document.)

17 THE WITNESS: Okay.

18 BY MR. SILBERMAN:

19 Q At the time, this is in April of '93. It says you
20 selected equipment, correct?

21 What had you done to select the equipment?

22 A The equipment selection had been an ongoing
23 process. We had been talking to transmitter manufacturers
24 as early as summer of 1990. There were bids in '91, '92 and
25 '93, or bids or proposal. We had determined a list of